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Supreme Court of the United States

October Term, 1964

No. 965

DAVID CRYSTAL, INC.,

Respondent,

against

THE CUNARD STEAM-SHIP COMPANY LIMITED,

Respondent,

against

JOHN T. CLARK AND SON,

Petitioner,

and

PENSON & COMPANY,

Respondent.

BRIEF OF RESPONDENT, PENSON & COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WILLIAM J. TILLINGHAST, JR.,
Proctor of Respondent,
Penson & Company,
55 Liberty Street,
New York, New York 10005.

TABLE OF CONTENTS

PAGE

Brief in Opposition 1–2

CASES CITED

Helis v. Ward (1939), 308 U. S. 365, 60 S. Ct. 283 2

Prudence Co. v. Fidelity & Deposit Co. (1936), 297 U. S. 198, 56 S. Ct. 387 2

AUTHORITY CITED

Supreme Court Rule 38 2

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Respondent, Penson & Company (hereinafter referred to as "Penson"), opposes the granting of the writ of Certiorari sought by the petitioner, John T. Clark and Son (hereinafter referred to as "Clark"), insofar as it pertains to Penson as said petition does not give rise to any issue affecting Penson.

The only issue in this action which directly affects Penson is the ruling of the trial court that it had no jurisdiction over the claims asserted against Penson either by Clark's impleading petition or by the amended libel of David Crystal, Inc. (pp. 43a-53a, Joint Appendix filed herein). The Court of Appeals did not disturb this ruling and saw no need to discuss the jurisdictional problems arising therefrom as they had become academic in view of its prior conclusions, which include Penson's freedom from responsibility for the misdelivery (p. 11a, Appendix to Clark's Petition).

Clark accepts this ruling and affirmance by the courts below by failing to raise the question of jurisdiction in its petition, and, as a result, there is no issue before this Court which involves Penson. There being no issue, there can be no review and, therefore, Clark's petition must be denied as to Penson regardless of whether or not it is granted as to the others. (Supreme Court Rule 38; *Helis* v. *Ward* (1939), 308 U. S. 365, 60 S. Ct. 283; *Prudence Co.* v. *Fidelity & Deposit Co.* (1936), 297 U. S. 198, 56 S. Ct. 387).

Respectfully submitted,

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